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PATENT

Atty. Dkt. No. YOR920030570US1

REMARKS

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are unpatentable or obvious under the provisions 35 U.S.C. §§ 102 and 103. Thus, the Applicants believe that all of these claims are now in allowable form.

In addition, the Applicants' representative would like to thank Examiner Turchen and Examiner Arani for kindly taking a substantial amount of time on June 12, 2007 to discuss the merits of the subject invention. The Applicants' representative is aware of the time constraint that is placed on the Examiners and is appreciative of the Examiners' willingness to devote such large quantity of time to discuss the case on the merits.

I. REJECTION OF CLAIMS 1-3, 5-8, 13-17, 23-25 AND 27-30 UNDER 35 U.S.C. § 102

The Examiner rejected claims 1-3, 5-8, 13-17, 23-25 and 27-30 as being anticipated by the Baffes, et al. application (U.S. Patent Application Publication No. 2004/0111636, published on June 10, 2004, hereinafter referred to as "Baffes"). In response, the Applicants have amended independent claims 1 and 23, from which claims 2-3, 5-8, 13-17, 23-25 and 27-29 depend, as well as independent claim 30, in order to more clearly recite aspects of the invention.

In particular, the Examiner's attention is respectfully directed to the fact that Baffes does not disclose selecting a new server configuration for a new server instance from among a plurality of new server configurations, as recited in amended independent claims 1, 23 and 30.

Specifically, independent claims 1, 23 and 30, as amended, recite:

1. A method for automated adaptive reprovisioning of servers under security assault, the method comprising:

detecting a security assault or a possible security assault on a first server;
and

reprovisioning by automatically creating a new server instance with a desired new server configuration to perform at least one of the tasks performed by said first server, wherein said desired new server configuration for said new

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server instance is selected from a plurality of new server configurations.
(Emphasis added)

23. A computer-readable medium having stored thereon a plurality of instructions for automated adaptive reprovisioning of servers under security assault, said plurality of instructions including instructions which, when executed by a processor, cause said processor to perform:

detecting a security assault or a possible security assault on a first server;
and

reprovisioning by automatically creating a new server instance with a desired new server configuration to perform at least one of the tasks performed by said first server, wherein said desired new server configuration for said new server instance is selected from a plurality of new server configurations.
(Emphasis added)

30. A system for automated adaptive reprovisioning of servers under security assault, the system comprising:

a first server;

a security monitor, coupled to said first server, for detecting if said first server is a candidate for automatic reprovisioning with a new server instance having a desired new server configuration; and

a provisioner, coupled to said first server, for automatically reprovisioning said server with said new server instance if said server is such a candidate, wherein said desired new server configuration for said new server instance is selected from a plurality of new server configurations. (Emphasis added)

Applicants' independent claims 1, 23 and 30, as amended, clearly recite the step of selecting a new server configuration for a new server instance from among a plurality of new server configurations. The Examiner concedes in the Office Action that "Baffes ... does not disclose selecting said new server instance from a plurality of new server configurations" (Office Action, Page 8). Accordingly, the Applicants respectfully submit that independent claims 1, 23 and 30, as amended, are not anticipated by Baffes and are patentable under 35 U.S.C. §102.

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Claims 2-3, 5-8, 13-17, 24-25 and 27-29 depend from claims 1 and 23 and recite additional features therefore. As such, and at least for the same reasons set forth with respect to independent claims 1 and 23, the Applicants respectfully submit that claims 2-3, 5-8, 13-17, 24-25 and 27-29 are also not anticipated by Baffes and are patentable under 35 U.S.C. §102. Accordingly the Applicants respectfully request that the rejection of claims 1, 2-3, 5-8, 13-17, 23-25 and 27-30 under 35 U.S.C. §102 be withdrawn.

II. REJECTION OF CLAIMS 4, 9-12, 18-22 AND 26 UNDER 35 U.S.C. § 103

1. Claims 4, 9-12 and 26

The Examiner rejected claims 4, 9-12 and 26 as being unpatentable over Baffes in view of the Agha, et al. patent (U.S. Patent No. 6,044,461, issued on March 28, 2000, hereinafter referred to as "Agha"). In response, the Applicants have amended independent claims 1 and 23, from which claims 4, 9-12 and 26 depend, as discussed above in order to more clearly recite aspects of the invention.

Moreover, the Applicants respectfully submit that Baffes is not a proper reference against the Applicants' invention under 35 U.S.C. § 103(c). As the published Baffes application was filed on December 5, 2002 and published on June 10, 2004, which is after the Applicants' December 12, 2003 priority date, the published Baffes application is a 102(e) type reference. The published Baffes application was assigned to International Business Machines Corp. (Please see Assignee's name on the first page of the published Baffes application).

The Applicants' invention is also assigned to International Business Machines Corp., and the assignment was recorded on December 12, 2003 (Reel/Frame 014800/0434) (See enclosed Notice of Recordation). Thus, the Applicants' invention and the published Baffes application were commonly assigned at the time of the Applicants' invention. Since this application is an application filed on or after November 29, 1999, the published Baffes application does not preclude patentability under the provisions of 35 U.S.C. § 103(c), as amended by the American Inventors Protection Act of 1999. See MPEP 706.02(I)(1).

Furthermore, Agha fails to teach or suggest all of the limitations of the Applicants' invention. Accordingly, the Applicants respectfully submit that independent claims 1

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and 23 are not made obvious by Baffes in view of Agha and are patentable under 35 U.S.C. §103.

Claims 4, 9-12 and 26 depend from claims 1 and 23 and recite additional features therefore. As such, and at least for the same reasons set forth with respect to independent claims 1 and 23, the Applicants respectfully submit that claims 4, 9-12 and 26 are also not made obvious by Baffes in view of Agha and are patentable under 35 U.S.C. §103. Accordingly the Applicants respectfully request that the rejection of claims 4, 9-12 and 26 under 35 U.S.C. §102 be withdrawn.

2. Claims 18-22

The Examiner rejected claims 18-22 as being unpatentable over Baffes in view of the Burnett, et al. application (U.S. Patent Application Publication No. 2003/0018889, published on January 23, 2003, hereinafter referred to as "Burnett"). In response, the Applicants have amended independent claim 1, from which claims 19-22 depend, as discussed above in order to more clearly recite aspects of the invention. Claim 18 has been cancelled without prejudice.

Moreover, as discussed above the Applicants respectfully submit that Baffes is not a proper reference against the Applicants' invention under 35 U.S.C. § 103(c). Thus, as Burnett fails to teach or suggest all of the limitations of the Applicants' invention, the Applicants respectfully submit that independent claim 1 is not made obvious by Baffes in view of Burnett and is patentable under 35 U.S.C. §103.

Claims 19-22 depend from claim 1 and recite additional features therefore. As such, and at least for the same reasons set forth with respect to independent claim 1, the Applicants respectfully submit that claims 19-22 are also not made obvious by Baffes in view of Burnett and are patentable under 35 U.S.C. §103. Accordingly the Applicants respectfully request that the rejection of claims 19-22 under 35 U.S.C. §103 be withdrawn.

III. COMMONLY OWNED REFERENCE

As noted above, both Baffes and the present application are commonly owned by International Business Machines Corp. In the interview of June 12, 2007, Examiners

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Turchen and Arani noted that this circumstance might necessitate a rejection of the claims of the present application under the doctrine of non-statutory obviousness-type double patenting. However, upon further review of Baffes, the Applicants note that Baffes was abandoned as of May 29, 2007. Accordingly, the Applicants respectfully submit that the claims of the present invention would not give rise to an instance of double patenting in light of Baffes.

Conclusion

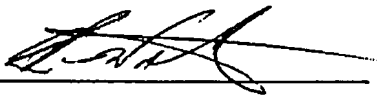
Thus, the Applicants submit that all of the presented claims now fully satisfy the requirements of 35 U.S.C. §102 and §103. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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